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BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

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Mr. Chairman. It has been almost two years since I last appeared before this committee on railroad safety issues. The progress made over those two years has been historic--because by any criteria, the last two years has been the safest 24-months in the nearly 100 years of American railroading for which the federal government has had safety oversight.

In 1985, record lows were achieved in every major category where comparisons have historically been made to gauge railroad safety trends. The number of accidents, accident ratio, percentage of employee workplace injuries, and fatalities both in railroad operations and at grade crossings were the lowest ever recorded. Equally important is the fact that 1985's accomplishments represented continuation of a trend--a trend that began with the coming of deregulation seven years ago. These are the numbers; they speak for themselves.

Raw accident numbers in 1985 were down 70 percent from the peak pre-Staggers year of 1978. Accident rate--a more reliable indicator than raw numbers--declined more than 60 percent over the same period.

Rail related fatalities are down 37 percent, and grade crossing fatalities down 48 percent from their 1976 peak. At a time when workplace injury rates are rising in many industries, our 1985 average of 8.6 per 200,000 hours worked was the lowest ever recorded, a 31 percent improvement from the last pre-Staggers year of 1979.

Because this hearing is being held a month earlier than the traditional March date--and I strongly commend the committee for doing that--we do not yet have complete figures for 1986. However, the data compiled for the first 10 months of last year makes it abundantly clear that 1986 will surpass 1985 as the safest year in the history of American railroading.

Preliminary figures for 1986 indicate that reportable accidents fell 21.3 percent below the record year of 1985. Track related accidents declined 25.5 percent, equipment accidents 22.9 percent, and human factor accidents 19 percent. Grade crossing accidents fell 7.6 percent. Employee workplace injuries declined 25.1 percent, and grade crossing injuries fell 7.8 percent. In one important category statistics did not improve--employee fatalities associated with train movements, where there were 26 in 1986

compared to 23 in 1985. This is still, however, a substantial improvement over the 42 in 1984, and 77 in the last pre-Staggers year.

Overall, the 1986 safety numbers are remarkable figures--no other mode of transportation approaches the improvement in railroad safety achieved over this decade. And that improvement was not a matter of chance.

Although this committee will undoubtedly hear railroad labor and railroad management attack one another--and the Federal Railroad Administration (FRA)--in the course of this morning's testimony, the fact is that both labor and management have contributed substantially to this improvement with a renewed commitment to safety in their daily operations.

But in all candor, the contributions of management, labor and federal safety officers have not been the major cause of improvement in railroad safety. The major factor is a piece of legislation--the Staggers Rail Act of 1980, which partially deregulated the industry.

The Staggers Act of 1980 gave the railroad industry something it had not had in decades--positive cash flow. And railroads have used that cash flow to reshape their infrastructure into a safer system, as well as a more efficient one. The industry's annual investment in roadbed and structures have tripled in the seven years since Staggers. Post-Staggers capital investment now exceeds $10 billion, and it shows on every bottom line--in better service, stronger companies, and improved safety performance.

Having given the Staggers Act full credit for its accomplishments, I also believe that the improvement in railroad accident statistics unquestionably reflects an increasingly effective regulatory enforcement program at the federal level. The Federal Railroad Administration has concluded more major regulatory--and in some cases deregulatory--proceedings in the past three years than in any similar period in its history. Our inspection force, and the number of on-site inspections, are both at an all time high, and the results reflect it.

Exhibit A to this testimony illustrates the fact that over the past two years, the number of on-site inspections performed by FRA has increased in virtually every major category. Over the same 24 month period, FRA inspectors have completed comprehensive system assessments of four major carriers, and limited assessments of 44 others.

During the same time span, the agency has completed a series of major rulemakings:

- Alcohol and Drug Rule:

  FRA has issued final regulations to combat alcohol and drug use in the railroad industry. These regulations were accompanied by initiation of a national program of education, counselling and treatment--Operation: Redblock--which now covers more than half of all employees in the railroad workplace. Unfortunately, we have been forced to wage an 18 month legal battle with the Railway Labor Executive's Association (RLEA) to keep that rule in effect. Although the rule is in fact in place today, its effective date was delayed for more than three months by the ongoing litigation, and as recently as January 9--five days after the Chase, Maryland accident--RLEA filed new documents before the Ninth Circuit Court of Appeals in support of its previous request to bar all reasonable cause and post-accident testing.

- Use of Telemetry Devices for Intermediate Power Brake Tests

FRA issued a series of regulations authorizing the use of modern telemetry devices to monitor railroad braking systems--in lieu of the antiquated system of manual inspections that prevailed in the industry until 1985. The manual brake test is effective, but can only be performed when the train is standing still. Telemetry devices give the engineers the capacity to monitor the functioning of their braking systems at all times--whether the train is moving or stationary.

- Blue Flag Protection

FRA added a new form of protection for employees performing pre-departure inspection of rear-end markers.

- Communications

On January 27, FRA commenced a major safety inquiry on communications in the railroad industry. The inquiry covers topics ranging from effective radio communications to satellite technology and automatic train control.

- Grade Crossing Safety

  Finally, FRA conducted two days of public hearings on grade crossing safety. The purpose of those hearings was to elicit comments from all interested parties on how public and private efforts can be more effectively channeled to reduce grade crossing fatalities. Subsequent to those hearings, FRA issued a 32 page report summarizing its findings and outlining a series of new safety initiatives. A copy of that report has been submitted to this committee for review and consideration.

The legislation we plan to submit soon will enable FRA to maintain this level of effort over the next three years. It would support a field force of 379 positions, 325 of whom are inspectors. The overall program level of $40.64 million for 1988 represents an increase of $2.29 million over 1987.

In addition, the industry is, for the first time, being asked to share in financial support of the safety program through a system of user fees. By ensuring that those who benefit from the program share its cost of operation, the user fee proposal will enable this committee and the Administration to mesh our commitment to a strong safety program with the reality of increasingly tight budget ceilings.

Against this background, let me now turn from last year's record to this year's priorities.

The targeting of FRA resources is not a matter of chance. At the conclusion of each calendar year, the agency prepares and implements a national inspection plan. Using such factors as traffic volumes, accident histories, passenger loadings and hazardous material movements, the NIP sets forth detailed instructions on the conduct of inspections, manpower , utilization, and goals and priorities for each region. Beginning with calendar year 1987, the agency is also utilizing a resource allocation model to ensure proper geographic and substantive distribution of the inspector force. I will submit to this committee for review both the current National Inspection Plan (NIP) and FRA's safety inspector staffing study which was requested by the Appropriation's Committee. These will give you a better sense of how the prioritization process works in practice.

We will also, in 1987, conduct full system assessments of three railroads--Conrail, the Soo-Milwaukee, and a commuter carrier yet to be designated. Those assessments will be supplemented by a special followup assessment on SEPTA.

Regulatory efforts over the next year will be fourfold:

- First, both in timing and priority, is FRA's broad based reevaluation of communication practices in the railroad industry. Three days of public hearings were concluded in this proceeding last month, and we are now in the open docket period.

- FRA has established a team of senior inspectors, headed by Frank Bridges of our Denver office, to perform a 10 month analysis of railroad dispatching practices. That analysis will focus on issues ranging from training to operating practices, workload, and stress. It is our intention to hold public hearings on these issues when the Bridges group has completed and compiled a data base.

- We will commence a formal inquiry on safety issues stemming from the construction and equipping of the locomotive cab. Considerable background work has been completed on that proceeding, and it will formally commence upon completion of the communications inquiry.

- Finally, we are re-examining decisions made in the 1970's on the use of automatic train control by freight trains operating in the Northeast Corridor. Between 1977 and 1983, both FRA and National Transportation Safety Board (NTSB) considered recommending that freight and commuter trains operating on the Corridor be equipped with receiver units that would enable them to utilize the ATC transmission structure incorporated in the Northeast Corridor roadbeds. For a variety of reasons, both agencies drew back from those recommendations. I believe that issue needs to be re-examined, and we will review it--and take whatever action proves necessary--in the year ahead.

Like the inspection priorities, these regulatory priorities are not a matter of chance. We recognize that resources available for safety enforcement are finite--both in the public and private sector. And the regulatory decisions we make have an enormous influence over where the industry will allocate those resources. In a very real sense, safety is the ultimate cost benefit issue, and a safety dollar spent on the fourth, fifth, or sixth most productive option, at the expense of a project with greater safety impact, is an opportunity wasted, and

possibly forever wasted. The real challenge before this or any other safety agency is the need to tailor its regulatory program to direct scarce resources to the area of greatest real world impact.

At FRA, we take that challenge very seriously. We assess on an annual basis the relative merits of our regulatory options, and pursue them in what we believe, in our best judgment, to be the order of public benefit priority. We also review existing regulations, to ensure that those overtaken by time and technology are altered or eliminated. And we vigorously resist efforts to alter those regulatory priorities toward areas of lesser cost benefit and public safety impact. This committee has traditionally taken the lead in supporting us in those efforts, and we appreciate that.

This approach has produced solid progress throughout the 80's. But there is also a challenge in these achievements. Today's progress is the standard by which next year's performance will be judged. And each percentage improvement in accident statistics is geometrically harder to generate than the one

which preceded it. As accident rates have fallen, the pattern of causation in railroad accidents has gradually shifted. Equipment related accidents, such as track and signal failures, have declined sharply. Track related accidents alone, for example, have fallen more than 70 percent in the 1980's. At the same time, human performance accidents have become an increasing percentage of all accidents, and a dominant cause of the truly serious incidents. We are now past the era in which we could generate dramatic improvements in safety performance with a few more track inspections, or the investment of additional dollars in eliminating deferred maintenance. The challenges of the future will be far more complex. If we are going to keep the accident rate moving downward, we need to develop mechanisms to deal with the complex issues that arise from human performance accidents. To do that effectively, we need the assistance of the Congress in closing a loophole in the Railroad Safety Act.

Under present law, FRA's enforcement authority extends only to railroad companies. The agency has no clear authority to levy sanctions--such as suspension of operating privileges--on railroad employees. This lack of authority is a serious concern

in an industry where human performance is becoming a dominant factor in the truly serious accidents.

In some instances, the Alcohol and Drug Rule for example, we have attempted to reach individual conduct through the "backdoor" by requiring companies to place conduct restrictions on their own employees. Whether this rule will survive judicial scrutiny remains to be seen. At best, however, this is a backdoor approach to regulation, the best we can do under our current authority. And it leaves FRA entirely dependent on each company's willingness (and ability) to act against an individual who violates federal safety standards.

That ability is often restrained by complex and time-consuming grievance procedures. The Federal Aviation Administration (FAA) has made effective use of its authority to suspend the certification of aviation personnel where circumstances justify suspension. We are considering seeking similar authority as a powerful deterrent to employee misconduct. I believe the lack of such authority is a serious impediment to combatting human factor accidents.

For example, it draws into serious question our ability and authority to pursue an employee licensing program. The lack of clear authority to proceed directly against an offending employee, for example, through fine or suspension, would be a practical barrier to an effective licensing program even if we concluded the concept had merit from a safety policy perspective.

This lack of authority also stands as an obstacle to addressing what may be the most serious safety problem now confronting this industry--the tampering and disabling of safety devices by operating employees.

In the Chase, Maryland accident, a basic warning device designed to ensure crew attention in a stopping emergency was found to be taped and intentionally disabled. This is not an isolated incident. During the week of January 12, an FRA dragnet of the five major yards on the Northeast Corridor discovered six locomotives with whistles disabled in an identical manner--notwithstanding the fact that considerable advance warning of the inspection was given. In succeeding weeks, FRA inspectors discovered three more Amtrak locomotives with equipment ranging from alerting devices to automatic train

stopping devices disabled. Last week, the Commission of Inquiry into the tragic Canadian rail disaster at Hinton issued its final report--concluding that the disabling of the train's automatic stopping device was a likely contributing cause of the accident. Given the ease with which this type of tampering can be concealed, I fear that what we have discovered may truly be the tip of the iceberg.

This is an extremely serious problem. The best safety devices we can design will have little impact if they are disabled by the very people they are designed to protect--railroad employees. And our ability to deal with this issue is materially impaired by the fact that we can sanction only railroad companies. We can take no direct action against the employees, even if we catch them in the act.

The legislation which will be submitted to this committee will address this lack of authority.

It is a simple fact, Mr. Chairman, that safety is a shared responsibility between management and labor, between individuals and corporate entities. A statute granting enforcement authority over half that equation can never be more than half effective. Accountability must extend beyond the amorphous corporate entity to the individuals who run the railroads, both in management and labor, as it does in the FAA and under

existing hazardous material safety statutes. It is important for the assurance of rail safety that we demand accountability from labor and management alike.

Where we have the power to regulate, in areas like track, equipment and signals, FRA has produced spectacular improvement in accident ratios. We can produce similar results in the human factor area if we have the authority to act.

The Safety Act Reauthorization we plan to submit will recommend two other important improvements in the existing law.

The first would increase FRA's maximum civil penalty authority. That authority has not increased since 1970. Our proposal would more than compensate for inflation by increasing the limit fourfold to $10,000 per count.

The second proposal would grant FRA discretion, vested in the Administrator, to levy a $25,000 punitive assessment for flagrant violation of federal regulations, or a pattern of repeated noncompliance with federal directives. While this authority would rarely be used, it is a sanction Administrators should have to deal with the exceptional case where conventional remedies fail to gain cooperation of responsible authorities.

We believe these procedural amendments will materially enhance our ability to maintain, over the next three years, the kind of progress that has characterized railroad safety throughout the 80's. We ask your help in that effort.

Finally, and perhaps most important, I want to commend this committee, and particularly Senators Hollings and Danforth, who were Chairman and Ranking Member last year, for taking the leadership role in keeping the Safety Act Reauthorization free from amendments that mix economics and safety--and by doing so, divert scarce resources from areas of high safety impact to areas of low cost benefit. In 1983 and again last year, this committee took the position that it would rather have no safety authorization than a bill encumbered with amendments of this nature. It was a courageous position, and it was the right position. I supported it last year, and will do the same in the 100th Congress.